

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DERRICK D. BOGER,)	
)	
Petitioner,)	
)	
v.)	1:11CV118
)	
MARK L. SPEAS, et al.,)	
)	
Respondent.)	

**RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a state prisoner, has submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 along with an application to proceed *in forma pauperis*. The Petition cannot be further processed because court records reveal that Petitioner has already attacked the same conviction and sentence in a previous § 2254 petition [1:07CV44]. Consequently, Petitioner must apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current petition. This is required by 28 U.S.C. § 2244(b)(3)(A). *See* AO 241 (MDNC 3/97), *Instructions*, paragraph 5. Because of this pleading failure, this particular petition should be dismissed. *In forma pauperis* status will be granted for the sole purpose of entering this Recommendation and Order.

IT IS THEREFORE RECOMMENDED that the Petition be dismissed for failure to apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current petition as is required by 28 U.S.C. § 2244.

IT IS ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Recommendation and Order.

IT IS FURTHER ORDERED that the Clerk shall send Petitioner a copy of this Recommendation and Order, instruction forms for filing § 2254 petitions in this Court and for filing a Motion for Authorization in the United States Court of Appeals for the Fourth Circuit, an application to proceed *in forma pauperis* (upon request), and four copies of § 2254 petition forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2254 petition which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

/s/ L. Patrick Auld

L. Patrick Auld
United States Magistrate Judge

February 15, 2011